

NAVAJO NATION GRAZING ACT

TITLE 3, NAVAJO NATION CODE, CHAPTER 5

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NAVAJO NATION GRAZING ACT

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Subchapter 1. General Provisions

§ 700. Title

This chapter may be cited as the Navajo Nation Grazing Act.

§ 701. Authority

It is within the inherent authority of the Navajo Nation to adopt laws to regulate grazing in order to protect Navajo Nation lands against waste.

§ 702. Findings; Purpose

A. The Navajo Nation Council finds and declares:

1. The Navajo Nation is comprised of over 27,000 square miles of land, of which, a majority is used for grazing livestock;
2. The Navajo People possess the inherent right of self-government, secured and protected by the Treaties of September 9, 1849 (9 Stat. 974) and June 1, 1868 (15 Stat. 667) and other Federal laws, which includes the right to regulate the use of Navajo lands within the Navajo Nation; and
3. The grazing of livestock on Navajo lands is recognized through grazing permits which authorize Navajo People to graze livestock within their designated grazing use area.

B. It is the purpose of this chapter:

1. To establish a grazing law that will help Navajo People who want to raise livestock as a way of life or as a business, but at the same time protect Navajo Nation lands.
2. To regulate the use of limited land resources in the best manner possible given that the population of the Navajo Nation continues to increase.

3. To preserve and protect through proper grazing management, Navajo Nation land and restore those resources that have deteriorated.
4. To promote the use of land resources by Navajo People who desires to earn a living, in whole or in part, through the grazing of their own livestock.

§ 703. Definitions

- A. "Animal Unit" or "AU" means one adult cow with unweaned calf by her side or equivalent thereof based on comparative consumption. Accepted conversions are sheep and goat-one ewe, doe, buck or ram equals 0.20 AU; one llama equals 0.60 AU; horses and mules - one horse, mule, donkey or burro equals 1.25 AU.
- B. "Carrying Capacity" means the proper stocking rate possible without inducing a decline in forage production, forage quality, or related resources.
- C. "Co-Permittee" means a grazing permit issued in the name of two persons with the right of survivorship.
- D. "Department of Agriculture" means the Navajo Nation Department of Agriculture or its successor.
- E. "Director" means the Director of the Navajo Nation Department of Agriculture or his/her designee.
- F. "Grazing Permit Trustee" means a person appointed by the Navajo Nation Family Court to administer a grazing permit on behalf of a minor until he or she reaches 18 years of age.
- G. "Individual Indian Allotment Land" means individually owned land or any interest therein held in trust by the United States for the benefit of the respective individual Navajo.
- H. "Individually-Owned Fee Land" means land or any interest therein held by individuals not subject to federal restrictions against alienation or encumbrance.
- I. "Land Management District" means areas commonly referred to as districts or grazing districts.
- J. "Livestock" means domestic animals such as cattle, donkeys, goats, horses, mules, sheep, swine, and lamas raised for home use or profit.

- K. "Navajo Nation Fee Land" means all land or any interest therein held by the Navajo Nation and not held in trust by the United States or subject to Federal restrictions against alienation or encumbrance.
- L. "Navajo Nation Trust Land" means any land or any interest therein held by the United States in trust for the Navajo Nation, and land that is held by the Navajo Nation subject to federal restrictions against alienation or encumbrance, and aboriginal title held by the Navajo Nation recognized through treaties with the United States.
- M. "Range Conservation Officer" means an employee of the Department of Agriculture who has assumed the role and responsibility of the former local grazing official.
- N. "Range Management Unit" means a fenced tract of range land designated as a management unit for administration of grazing which is situated within a land management unit.
- O. "Regional Director" means the Director of the Navajo Regional Office for the Bureau of Indian Affairs, or his/her designee or authorized representative.
- P. "Secretary" means the Secretary of Interior or his/her designated representative.

§ 704. Applicability

- A. Except as provided in subsection (B) and (C), this Act shall apply to all Navajo Nation trust lands within the territorial jurisdiction of the Navajo Nation.
- B. This Act shall not apply to private (fee) lands held by the Navajo Nation or an individual, allotted lands. Navajo Nation trust lands outside the formal reservation boundaries in the Eastern Agency, nor Canoncito Chapter, Alamo Chapter or Ramah Chapter trust lands.
- C. This Act shall not apply to the Navajo Partitioned Lands (NPL) until five (5) years after its adoption, nor to the New Lands while said lands are under the administration of the Navajo-Hopi Indian Relocation Commission.

§ 705. General Authority of the Director

- A. The Director of the Department of Agriculture is authorized to enforce this Act and regulations promulgated hereunder which includes the power to assess

civil penalties for trespass and impound livestock as provided for under this Act.

- B. The Director of the Department of Agriculture may delegate his/her authority under this Act to any employee or officer of the Department of Agriculture or Resources Enforcement Officer as the Director deems necessary or expedient.

§ 706. Rules and Regulations

- A. The Director, subject to approval of the Resources Committee is authorized to promulgate rules and regulations as may be necessary to implement the intent of this chapter.
- B. Proposed rules and regulations shall be published for public review and comment for at least thirty (30) days prior to their adoption.
- C. The effectiveness and enforceability of this chapter shall not be dependent upon the adoption of any rules or regulations.

§ 707. Severability

If any provision of this chapter is held invalid for any reason by a court of competent jurisdiction, the remainder of this chapter shall not be affected and shall remain in full force and effect.

§ 708. Prior Inconsistent Law Superseded

Upon the effective date of this Act, all prior inconsistent enactments, laws, rules, policies, ordinances, and regulations of the Navajo Nation shall be repealed and superseded.

Subchapter 2. Grazing Permits

§ 709. Grazing Permits

- A. Except as otherwise provided, all livestock grazing on Navajo Nation trust land shall be authorized by a grazing permit issued by the Department of Agriculture, subject to approval of the Secretary and/or Regional Director.
- B. Upon approval of the Department of the Agriculture and the Navajo Nation Forestry Department, seasonal grazing permits may be authorized within the commercial forested area.

- C. No person shall be authorized to graze livestock in more than one land management district, or possess more than one grazing permit. The grazing permit of a spouse (husband or wife) shall be counted to determine how many permits an applicant possesses.
- D. No permittee shall be authorized to graze more than three (3) horses or 70 AU (350 sheep units).
- E. No grazing permit shall be issued for less than ten (10) AU (50 sheep units); provided, however, that all grazing permits issued for less than ten (10) AU prior to the adoption of this Act will be honored and reissued for a period not to exceed five years. Thereafter, permittees will be required to consolidate their permits to obtain at least 5 AU before a permit shall be reissued. Ten years after the adoption of this Act, no permit will be reissued for less than 10 AU.
- F. All permits issued prior to the adoption of this Act shall no longer renew automatically. One year after this Act is adopted, all permittees shall obtain a new permit. A permittee may apply for a new permit any time after the adoption of this Act.
- G. An applicant may designate a co-permittee with right of survivorship.

§ 710. Grazing Rights

- A. Grazing rights shall only be recognized for those persons having a valid grazing permit.
- B. The Navajo Nation Family Courts shall determine the rights to a grazing permit in cases involving divorce, separation and the death of a permittee.

§ 711. Eligibility

In order to obtain a livestock grazing permit, an applicant must meet the following criteria:

- A. The applicant must be an enrolled member of the Navajo Nation and at least 18 years old. A minor who is under 18 years can obtain a grazing permit, but only through inheritance or gift. In this situation, the Navajo Nation Family Court must appoint a grazing permit trustee to manage the permit until the minor reaches 18 years of age.
- B. The applicant must have an identifiable and recognized customary use area that is capable of sustaining the number of livestock authorized under the permit.

- C. The applicant/permittee must reside in the district and area covered by the permit during the term of the permit. If a permittee desires to temporarily leave the area, he/she may petition the Department of Agriculture to place the permit on inactive status for a period not to exceed two consecutive years or sublet the permit to a person who is eligible under this Act.

§ 712. Term

The term of a grazing permit shall be five (5) years, but may be renewed upon satisfactory compliance with this Act.

§ 713. Transfer of Grazing Permits

- A. A permit can only be transferred to a person who meets the eligibility criteria under this Act. This includes transfers authorized by the Navajo Nation Family Courts involving divorce, separation and probate cases. A permittee holds a grazing permit as a trustee for the benefit of his family and can only transfer the permit to another eligible family member. In the event no eligible family member desires to graze livestock, then the permit can be transferred to another permittee who shares the same customary use area.
- B. A grazing permit shall not be transferred outside the district or area for which it was issued. If there is an area not covered by a permit or an area that is covered by a permit, but has sufficient carrying capacity to accommodate additional livestock then a person can apply for a new permit for that area.
- C. All transfers must be approved by the Department of Agriculture and the Regional Director. The Department of Agriculture shall honor transfers directed by the Navajo Nation courts in cases involving divorce, separation or probate.
- D. The number of livestock under a permit shall not exceed 70 AU. If a permittee acquires another permit through inheritance or other means (purchase/transfer) which will result in the permittee possessing more than 70 AU, then the permittee shall dispose of all livestock in excess of 70 AU within ninety (90) days of inheritance or other acquisition. The permittee must also dispose that portion of his or her permit in excess of 70 AU within one year from the date of acquisition.

- E. Persons who receive a grazing permit by transfer, assignments and other means shall honor and abide by all previous consents, waivers and agreements.

§ 714. Assignment, Modification and Encumbrance of Grazing Permits

- A. Grazing permits shall not be assigned, modified, encumbered, collateralized, or subject to bailment without the express approval of the Department of Agriculture and the Regional Director.
- B. Any encumbrance shall not exceed the term of the permit.

§ 715. Subletting

- A. A permittee may sublet all or a part of his or her grazing permit to a member of his/her family subject to the approval of the Department of Agriculture and the Regional Director.
- B. The term of a sublease shall not exceed the term of the grazing permit.
- C. A sublease shall not grant any authority to approve or consent to rights-of-way, land withdrawals, homesite leases or other similar uses, nor shall a sublease provide any right to the sublessee to construct a home or other permanent improvements on the sublease premises.

§ 716. Cancellation

- A. The Director may, subject to approval of the Regional Director, cancel a grazing permit for any of the following reasons:
 - 1. Non-use for a period of two (2) consecutive years which has not been authorized by the Department of Agriculture; or
 - 2. Grazing fees or penalties assessed for trespass have not been paid as provided for by this Act; or
 - 3. The carrying capacity of the permitted area has diminished to a point where the range can no longer sustain the minimum number of livestock authorized by this Act; or
 - 4. Grazing livestock in excess of the permitted number.
 - 5. The permittee has violated this Act or the regulations promulgated hereunder.
- B. Unless otherwise provided, the Director shall provide the permittee at least thirty (30) days written notice of the intent to cancel and the right to an appeal before the

Office of Hearings and Appeals. If a notice of appeal is filed within thirty (30) days of the receipt of the notice to cancel, the decision to cancel shall be stayed pending the outcome of the appeal; otherwise, the decision to cancel shall be final.

§ 717. Descent and Distribution

- A. A probate proceeding shall be initiated in the Navajo Nation Family Court within six (6) months from the death of the permittee(s) to determine the rightful heirs, or the permit shall terminate.
- B. A permittee may execute a will designating who will inherit the permit in accordance with Navajo Nation laws. In the alternative, a permittee may designate on the back of a grazing permit an eligible person whom the permittee wants to inherit the permit in the event of the permittee's and co-permittee's death. The designation must be signed (or thumb print) by the permittee(s) and attested to by a notary public. The validity of the designation (will) shall be determined by the Navajo Nation Family Court. The designation on the back of a grazing permit shall grant no rights prior to a final judicial determination on who will inherit the permit.
- C. Upon the death of a permittee and co-permittee, if applicable, the Navajo Nation Family Court shall first determine ownership of livestock before deciding who will inherit the permit. In the absence of a will or designation on the back of a grazing permit and unless otherwise stipulated by potential heirs, the Navajo Nation Family Court shall distribute the permit, in accordance with the requirements of this Act, based upon the following priority:
 - 1. Surviving children, if none then,
 - 2. Surviving grandchildren, if none then,
 - 3. Surviving parents, if none then,
 - 4. Surviving brothers and sisters, if none then,
 - 5. Surviving nieces and nephews, if none then,
 - 6. Escheat to the Navajo Nation.
- D. In the event the Navajo Nation Family Court appoints a grazing permit trustee to administer a grazing permit on behalf of a minor, the trusteeship shall automatically terminate upon the minor reaching 18 years of age; provided, however, a grazing permit trustee may petition the Court for an extension of the grazing permit trust, with notice to the beneficiary, for good cause.

§ 718. Records

- A. The Department of Agriculture shall maintain accurate records of all grazing permits, brands and identification markings and ownership of livestock.
- B. The Department of Agriculture shall maintain records of the annual livestock count.
- C. The Department of Agriculture shall and maintain a current register containing the names of all livestock permittees using the range, the number of each class of livestock by age classes grazed annually and the periods during which grazing is permitted. All classes of livestock 6 months of age or older will be counted against the permitted number.
- D. The Department of Agriculture shall maintain records of range management units and special range use areas.

§ 719. Contents of Grazing Permit

A grazing permit shall contain the following information:

- A. Name of permittee(s), census number, and current address;
- B. A grazing permit number, consisting of the number of the grazing district, number of AU allowed and a number assigned to the range unit;
- C. Range use stipulations;
- D. The brands and/or identification marks to be used by the permittee on livestock grazing upon the permitted area, along with location of brands and marks; all brands and identification marks shall be approved by the Department of Agriculture;
- E. Optional: A map of the range unit showing boundaries and existing range improvements may be attached to the permit. The boundaries indicated in the map are not definitive boundaries, but are boundaries as perceived by the permit holder; and

§ 720. Grazing Fees

- A. Grazing fees shall be assessed on all grazing permits to fund the administration of grazing permits and range improvements.
- B. The Resources Committee shall determine the amount of grazing fees based upon AU.

- C. Fees shall be due and payable by January 1 of each calendar year. All permittees who fail to pay the prescribed fees by January 1 shall be subject to late charges.
- D. If a permittee fails to pay the prescribed grazing fees after sixty (60) days written notice, the grazing permit shall be cancelled. The grazing permit shall not be reissued or transferred until the fees have been fully paid. Any outstanding fees shall constitute a lien on the permit and the livestock grazed under the permit. The Department of Agriculture is authorized to seize said livestock to satisfy the debt and cost of enforcement.

§ 721. Land Management Districts

The Navajo Nation will retain the present land management districts (grazing districts) within the Navajo Nation, based upon the necessity of rehabilitating the grazing lands. District boundary changes may be made when deemed necessary and advisable by the Resources Committee and the Regional Director.

§ 722. Range Management Units

The Department of Agriculture may establish range management units with consideration of the need to preserve the range forage, land status, customary use area, land associated problems involved, and adjust such range management units as needed.

§ 723. Grazing Capacity

- A. The Department of Agriculture shall establish carrying capacity for each range management unit.
- B. Every five (5) years, the Department of Agriculture shall review and adjust the permitted livestock number and/or carrying capacity as may be necessary if it is determined that:
 - 1. The carrying capacity of the range or range management units have improved due to good management, improvements, the availability of water or increased annual precipitation.
 - 2. The carrying capacity of the range or range management units has diminished due to over grazing, lack of water, decreased annual precipitation, land withdrawals, or the grant of rights-of-ways, easements, leases, homesite leases, land use permits or other similar land uses.

- C. The Department of Agriculture shall perform an annual livestock count to ensure the carrying capacity of the range and range management units is not exceeded.

§ 724. Fences

- A. No fences shall be constructed for livestock management or agriculture use without the approval of the Department of Agriculture and the Regional Director.
- B. The establishment of a range management unit does not grant the permittee(s) exclusive use of the area. The permittee shall not prohibit access to other Navajos who desire to gather herbs, firewood, pinion nuts or other similar resources.
- C. The Resources Committee shall promulgate rules and regulations which govern the application, procedures, and criteria for constructing fences used to manage livestock and enclose agriculture.
- D. The Department of Agriculture may authorize, subject to the approval of the Regional Director, the removal of unauthorized existing fences, or fences no longer used for livestock management or agriculture.

§ 725. Prohibited Livestock

All rodeo stock, stallions recreation and special interest livestock shall be prohibited from grazing upon Navajo rangelands. Any violation of this provision shall be considered a trespass.

§ 726. Livestock Diseases; Herd Health

- A. Permittees shall be responsible for the health of their livestock.
- B. Whenever livestock on the Navajo Nation becomes infected with pests, contagious or infectious disease, or have been exposed thereto, permittees/owners shall treat their livestock and the Department of Agriculture may restrict the movement of livestock in accordance with applicable Navajo Nation, state, and federal laws. The Department of Agriculture may also institute preventive measures to control introduction of pests and contagious or infectious diseases.

§ 727. Construction Near Permanent Livestock Water Developments

- A. The Navajo Nation Department of Water Resources shall prescribe appropriate criteria and guidelines which

govern the construction of all dwellings, corrals, homes and other structures within one-half mile of federal government or Navajo Nation developed permanent livestock waters such as; springs, wells, and charcos or reservoirs, for the purposes of water resources management and protection.

- B. A written authorization from the Department of Agriculture and Department of Water Resources must be secured before any dwelling, corrals, or other structures may be constructed within one-half mile of federal government or Navajo Nation developed springs, wells and charcos or reservoirs on the Navajo Nation.
- C. No sewage disposal system shall be authorized or built on any range lands which will drain into springs or stream channels in such a manner that it would cause contamination of waters being used for livestock or potable water supply sources.

§ 728. Use of Motor Vehicle to Herd or Round-Up Livestock Prohibited.

It shall be prohibited for any person to use a motor vehicle (including all terrain vehicles and motor cycles) to herd or round-up livestock on range lands. This provision does not apply to paved roads or established non-paved roads. Any person who violates this provision may be subject to a civil penalty of one hundred dollars (\$100.00), issued by the Director or Range Conservation Officer, for each violation. Any person assessed a civil penalty under this provision shall be entitled to a hearing in accordance with the procedures under § 736.B. of this Act.

§ 729. Cruelty to Livestock

Any person who intentionally or willfully abuses, neglects or mistreats livestock shall be subject to a criminal penalty of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00).

Subchapter 3. Grazing Disputes

§ 730. Land Disputes; Findings and Purpose

- A. It is the finding of the Navajo Nation Council that
 - 1. The grazing boundaries separating a permittee's customary use area from another are generally undefined within the Navajo Nation. Because of this, limited land, and the increasing population

of Navajo People, there will be an increasing number of land use/grazing disputes.

2. There is a need for the Navajo Nation Council to provide effective procedures to resolve these land disputes in a fair and impartial manner.

B. It is the purpose of this subchapter to provide a means by which grazing permittees may resolve and settle land use and/or grazing disputes in both an informal and formal manner.

§ 731. Petition for Resolution of Land Dispute

A. All persons desiring a resolution of a land dispute shall file and lodge a petition with the Department of Agriculture.

B. The petition shall include the following information:

1. The names and addresses of the persons involved in the dispute;
2. The grazing permit numbers of the persons involved in the dispute; and
3. Any other information that may be of value to the Navajo Nation in resolving the dispute.

§ 732. Mediation

Prior to submitting a land dispute to a formal hearing, the Range Conservation Officer shall meet with the disputing parties within thirty (30) days to attempt to get them to agree upon a settlement of their differences. If the disputing parties cannot reach a settlement, the matter will be referred to the Navajo Nation Office of Hearings and Appeals for a resolution.

§ 733. Administrative Hearings

A. Within thirty (30) days upon receiving notification that a land use or grazing dispute can not be settled by mediation, the Range Conservation Officer shall refer the matter to the Navajo Nation Office of Hearings and Appeals for an administrative hearing.

B. The Notice of an administrative hearing shall be in writing and shall identify the persons involved in the dispute, and may contain a recommendation from the Department of Agriculture on how to resolve the dispute.

§ 734. Hearing Officer; Decision

- A. Within thirty (30) days of receipt of the Notice of Hearing by the Department of Agriculture, the Office of Hearings and Appeals shall appoint a hearing officer and schedule a hearing date.
- B. The Department of Agriculture shall cooperate with the Navajo Office of Hearings and Appeals by informing the parties in person as may be necessary of the date, time and place of the hearing and provide information as may be necessary to assist in resolving the dispute.
- C. Notice shall be afforded to the parties at least ten (10) days in advance of the date set for hearing. Each party may at their option be represented by counsel and shall have the opportunity to subpoena witnesses, present evidence, and cross-examine witnesses.
- D. The Hearing Officer shall issue written findings of fact and conclusions of law which shall state the decision and grounds thereof. The decision shall be final unless appealed.
- E. Any party adversely affected by a final decision of the Office of Hearings and Appeals may appeal the decision to the Navajo Nation Supreme Court within thirty (30) days notice of the final decision; otherwise, the decision shall be final. The Court shall review the decision of the Hearing Officer on the administrative record only. The decision shall not be subject to de novo review on appeal. The Court may substitute its judgment on questions of law, but shall otherwise uphold the decision of the Hearing Officer unless the Court finds the decision to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

Subchapter 4. Trespass; Civil and Criminal Penalties

§ 735. Trespass

- A. The Director is authorized to assess civil penalties against the owner of livestock found to be in trespass, collect fees, damages and impound trespassing livestock. The Director may also in his/her discretion petition the Navajo Nation Office of the Prosecutor to take criminal enforcement action under this Act and/or other applicable laws.
- B. The following acts shall constitute a trespass:
 - 1. Grazing livestock without a valid permit; or

2. Grazing livestock in excess of the permitted number; or
 3. Grazing livestock outside the area covered by the permit; or
 4. Grazing livestock in an area withdrawn from grazing use for reseeding or other conservation reasons; or
 5. Grazing livestock not authorized by a permit.
- C. Notification of trespass. Whenever the Department of Agriculture becomes aware of a trespass, the Range Conservation Officer shall investigate the matter. If the Range Conservation Officer determines there is a trespass, he may impound the livestock or give the livestock owner written notice to correct the trespass and pay any penalties, fees and damages that may be assessed by the Director in accordance with the Act.

§ 736. Civil Penalties

- A. Whenever the Director determines there has been a trespass under this subchapter, the Director may assess a civil penalty against the livestock owner not to exceed one hundred dollars (\$100.00) for each violation per day. The Director may also impound trespassing livestock, assess damages, including, but not limited to the reasonable value of the forage consumed, and assess the owner reasonable fees to cover the cost of gathering, impounding and feeding or pasturing the trespassing livestock. The value of forage consumed shall be based upon the Fair Market Value (FMV) of replacement feed. Any penalty, fees or damages assessed shall constitute a lien on the livestock.
- B. Any person assessed with a civil penalty under this subchapter or whose livestock have been seized shall have the right to a hearing before the Office of Hearings and Appeals. If a notice of appeal is filed within ten (10) days of the receipt of notice of the assessment of a civil penalty, the decision of the Director shall be stayed pending the outcome of the appeal; otherwise, the decision shall be final; provided however, the stay shall not apply to the seizure of livestock.

§ 737. Criminal Penalty

Any person who willful and intentional commits trespass as defined by this subchapter shall be guilty of criminal trespass. Any person found guilty of criminal trespass by the Navajo Nation

District Court shall be subject to a criminal penalty of not less than one hundred dollars (\$100.00) or more than five thousand dollars (\$5000.00). The guilty person shall also be subject to damages, including but not limited to the reasonable value of forage consumed, the cost of gathering, impounding and feeding or pasturing the trespassing livestock and the cost of enforcement. The value of forage consumed shall be based upon the FMV of replacement feed. Any damages assessed shall constitute a lien on the livestock.

§ 738. Seizure and Impoundment of Trespass Livestock

- A. Unless otherwise provided, the Navajo Nation may impound trespassing livestock after 10-day notice. The notice may be provided in person or posted at the nearest chapter house or in one or more local convenient stores. The notice shall contain the following:
 - 1. The name of owner, if known;
 - 2. A description of the trespassing livestock;
 - 3. The prohibited Act being committed;
 - 4. The time and date that the livestock owner must remedy the trespass.
- B. The Navajo Nation may impound trespass livestock, without notice where the owner does not possess a valid grazing permit, the livestock is trespassing in a restricted area closed to grazing, or the livestock presents a serious risk to the health and safety of the public, other livestock or wildlife.

§ 739. Disposal of Trespassing Livestock

- A. Livestock not redeemed within ten (10) days shall be sold at a public sale or auction. All proceeds shall be deposited in a special livestock account until the outcome of any hearing.
- B. The proceeds of any sale of impounded livestock shall be applied in the following priority:
 - 1. To satisfy the payment of all expenses incurred by the Navajo Nation in gathering, impounding and feeding or pasturing the livestock.
 - 2. To satisfy the payment of any penalties or damages assessed pursuant to this chapter.

3. Any remaining proceeds, shall be returned to the owner. If the owner does not claim the proceeds within six (6) months, they shall forfeit to the Navajo Nation.

§ 740. Returning of Impounded Livestock

- A. The owner, upon the satisfactory compliance with this Act, may redeem livestock impounded pursuant to this subchapter any time before the time set for sale by the Navajo Nation, provided that the owner submit proof of ownership and pay for the expenses incurred in gathering, seizing, impounding, feeding or pasturing the livestock, and any trespassing fees and damages assessed by the Navajo Nation and/or other damages caused by the livestock.
- B. If returning the livestock to the owner will result in a violation of the owner's grazing permit, the Nation shall dispose of the livestock and return the proceeds received from the livestock sale to the owner, less expenses incurred in gathering, impounding, feeding or pasturing the livestock, and any trespassing fees and damages assessed by the Navajo Nation and/or other damages caused by the animal.
- C. The Navajo Nation shall return erroneously impounded livestock to the residence of the rightful owner and waive all expenses.

§ 741. Appeals

- A. Any person who receives a notice of assessment of penalties, damages, seizing, and/or impoundment pursuant to this Act, or had their livestock impounded, may appeal by filing with the Department of Agriculture, a notice of appeal within 10 days of the date notice of assessment was served upon such person, or 10 days after their livestock was impounded but prior to the livestock sale.
- B. The Notice of Appeal shall be in writing and shall:
 1. Identify the person being assessed penalties, damages, or impoundment, or whose livestock was impounded;
 2. A statement of the facts;
 3. Specify the action being appealed;
 4. Specify the legal basis for the appeal; and

5. Contain a statement upon which the appellant relies in support of the appeal and such argument as appellant may care to make in support of the appeals.
- C. Within five (5) days after receiving a Notice of Appeal, the Department of Agriculture shall refer the appeal to the Navajo Office of Hearings and Appeals for assignment to a Hearing Officer.
- D. The Department of Agriculture shall cooperate with the Navajo Office of Hearings and Appeals and provide information as may be necessary to decide the case.

§ 742. Stay Upon Appeal

- A. The filing of a notice of appeal with the Department of Agriculture shall not stay the enforcement of impoundment. However, a livestock owner may file a motion for a stay of impoundment at any time after a notice of impoundment is served upon the person. A stay may be granted by the Hearing Officer where justice so requires, and upon such terms and conditions (including paying expenses for the keeping or pasturing the livestock) as the Hearing Officer may find just and proper. An order granting a stay shall be in writing and shall state the grounds therefore and the terms and conditions thereof.

§ 743. Hearing and Decision

- A. Within thirty (30) days of receipt of the Notice of Appeal by the Department of Agriculture, the Office of Hearings and Appeals shall appoint a hearing officer and schedule a hearing date.
- B. Notice shall be afforded to the parties at least ten (10) days in advance of the date set for hearing. Each party at the hearing may at their options be represented by counsel and shall have the opportunity to subpoena witnesses, present evidence, and cross-examine witnesses.
- C. Any party adversely affected by a final decision of the Office of Hearings and Appeals may appeal the decision to the Navajo Nation Supreme Court within thirty (30) days notice of the final decision; otherwise, the decision shall be final. The Court shall review the decision of the Hearing Officer on the administrative record only. The decision shall not be subject to de novo review on appeal. The Court may substitute its judgment on these questions of law within its special competence but shall otherwise uphold the decision of the Hearing Officer.

unless the Court finds the decision to be arbitrary,
capricious, an abuse of discretion or otherwise not in
accordance with law.

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